

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

TANAWAH M. DOWNING,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

NO: 4:19-CV-5055-TOR

ORDER SUMMARILY DISMISSING
HABEAS PETITION

Petitioner, a prisoner at the Coyote Ridge Corrections Center, brings this *pro se* Petition for Writ of Habeas Corpus by a Person in State Custody pursuant to 28 U.S.C. § 2254. The \$5.00 filing fee has been paid.

PROPER RESPONDENT

An initial defect with the Petition is that it fails to name a proper party as a respondent. The proper respondent in a federal petition seeking habeas corpus relief is the person having custody of the petitioner. *Rumsfeld v. Padilla*, 542 U.S. 426 (2004); *Stanley v. Cal. Supreme Court*, 21 F.3d 359, 360 (9th Cir. 1994). If the

petitioner is incarcerated, the proper respondent is generally the warden of the institution where the petitioner is incarcerated. *See Ortiz-Sandoval v. Gomez*, 81 F.3d 891 (9th Cir. 1996). Failure to name a proper respondent deprives federal courts of personal jurisdiction. *See Stanley*, 21 F.3d at 360.

EXHAUSTION REQUIREMENT

Petitioner challenges his 2018 Benton County jury conviction for violating a domestic violence court order. He was sentenced to 24 months incarceration. Petitioner indicates that his direct appeal to the Washington State Court of Appeals, Division III, is still pending. ECF No. 1 at 3.

In his grounds for relief, Petitioner argues that the State of Washington has no jurisdiction to decide federal constitutional matters. ECF No. 1 at 6-13. It has long been settled that state courts are competent to decide questions arising under the U.S. Constitution. *See Baker v. Grice*, 169 U.S. 284, 291 (1898) (“It is the duty of the state court, as much as it is that of the federal courts, when the question of the validity of a state statute is necessarily involved, as being in alleged violation of any provision of the federal constitution, to decide that question, and to hold the law void if it violate that instrument.”); *see also Worldwide Church of God v. McNair*, 805 F.2d 888, 891 (9th Cir. 1986) (holding that state courts are as competent as federal courts to decide federal constitutional matters). Therefore, Petitioner’s arguments to the contrary lack merit.

1 Additionally, before a federal court may grant habeas relief to a state prisoner,
2 the prisoner must exhaust the state court remedies available to him. 28 U.S.C. §
3 2254(b); *Baldwin v. Reese*, 541 U.S. 27 (2004). Exhaustion generally requires that
4 a prisoner give the state courts an opportunity to act on his claims before he presents
5 those claims to a federal court. *O’Sullivan v. Boerckel*, 526 U.S. 838 (1999). A
6 petitioner has not exhausted a claim for relief so long as the petitioner has a right
7 under state law to raise the claim by available procedure. *See id.*; 28 U.S.C. §
8 2254(c).

9 To meet the exhaustion requirement, the petitioner must have “fairly
10 present[ed] his claim in each appropriate state court (including a state supreme court
11 with powers of discretionary review), thereby alerting that court to the federal nature
12 of the claim.” *Baldwin*, 541 U.S. at 29; *see also Duncan v. Henry*, 513 U.S. 364,
13 365–66 (1995). A petitioner fairly presents a claim to the state court by describing
14 the factual or legal bases for that claim and by alerting the state court “to the fact
15 that the . . . [petitioner is] asserting claims under the United States Constitution.”
16 *Duncan*, 513 U.S. at 365–366; *see also Tamalini v. Stewart*, 249 F.3d 895, 898 (9th
17 Cir. 2001) (same). Mere similarity between a claim raised in state court and a claim
18 in a federal habeas petition is insufficient. *Duncan*, 513 U.S. at 365–366.

19 Furthermore, to fairly present a claim, the petitioner “must give the state
20 courts one full opportunity to resolve any constitutional issues by invoking one

1 complete round of the State’s established appellate review process.” *O’Sullivan*,
2 526 U.S. at 845. Once a federal claim has been fairly presented to the state courts,
3 the exhaustion requirement is satisfied. *See Picard v. Connor*, 404 U.S. 270, 275
4 (1971). It does not appear from the face of the Petition or the attached documents
5 that Petitioner has exhausted his state court remedies as to each of his grounds for
6 relief. Indeed, Petitioner affirmatively represents that he did not exhaust his state
7 court remedies.

8 **GROUND FOR FEDERAL HABEAS RELIEF**

9 Petitioner asserts that the Washington state constitution contradicts the federal
10 constitution regarding the Fifth Amendment right to “presentment or indictment of
11 a Grand Jury.” He claims “no bill of indictment” was brought against him rendering
12 his arrest, conviction and imprisonment illegal.

13 Petitioner seems to argue that because the state courts have defied “federally
14 established procedures and processes for the adjudication of crimes” only “a court
15 of federal jurisdiction” has jurisdictional authority over his claims. His bald
16 assertion that “due process of the law was ignored” is unsupported by his factual
17 allegations.

18 The United States Supreme Court stated long ago: “Prosecution by
19 information instead of by indictment is provided for by the laws of Washington.
20 This is not a violation of the Federal Constitution.” *See Gaines v. State of*

1 *Washington*, 277 U.S. 81, 86 (1928). Consequently, Petitioner's assertions to the
2 contrary presented in his four grounds for federal habeas relief are legally frivolous.

3 Because it plainly appears from the petition and the attached exhibits that
4 Petitioner is not entitled to relief in this Court, **IT IS ORDERED** the petition, ECF
5 No. 1, is **DISMISSED** pursuant to Rule 4, Rules Governing Section 2254 Cases in
6 the United States District Courts.

7 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order,
8 enter judgment, provide copies to Petitioner, and close the file. The Court certifies
9 that pursuant to 28 U.S.C. § 1915(a)(3), an appeal from this decision could not be
10 taken in good faith, and there is no basis upon which to issue a certificate of
11 appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). A certificate of
12 appealability is therefore **DENIED**.

13 **DATED** May 14, 2019.



15 *Thomas O. Rice*
THOMAS O. RICE
16 Chief United States District Judge